

Resolution No.:	17-417
Introduced:	May 8, 2012
Adopted:	May 8, 2012

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: APPLICATION SDPA 11-3, for amendment of the Schematic Development Plan and Declaration of Covenants approved by the Council in LMA G-619 on January 23, 1990, in Resolution No. 11-1825; Stephen J. Orens, Esquire and Casey L. Cirner, Esquire, Attorneys for the Applicant, YBM Construction, Inc; OPINION AND RESOLUTION ON APPLICATION; Tax Account No. 09-00774722.

OPINION

The application for Schematic Development Plan Amendment (SDPA) No. 11-3 was filed by YBM Construction, Inc., on June 30, 2011. The site is in the O-M zone, located at 19815 Blunt Road in Germantown, Maryland, consisting of 2.06 acres of land, known as Lot 18, Block 3 of the Plumgar Subdivision, in the 9th Election District. The SDPA seeks to amend the previously approved Schematic Development Plan and Declaration of Covenants by reconfiguring the location of the building and parking facility, adding to the height of the previously approved building, adjusting the road alignment and accommodating current environmental regulations.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed a report on February 28, 2012 (Exhibit 32(a)) recommending approval of the Schematic Development Plan Amendment without the need for a hearing by the Office of Zoning and Administrative Hearings (OZAH). In the interest of brevity, the Staff report is incorporated herein by reference.

At its regularly scheduled meeting on March 8, 2012, the Planning Board voted unanimously to recommend approval of SDPA-11-3, based on the reasoning in the Technical Staff report (with two minor revisions incorporated into the final SDPA, dated March 21, 2012 (Exhibit 33)).¹ In the absence of any opposition, the Planning Board also recommended that the matter be forwarded to the Council without a public hearing before the Hearing Examiner, as

¹ These revisions replaced the phrase "provide not less than 107 spaces" on the binding elements table with the zoning standard "minimum 3 spaces/1000 S.F. of office space" and adding the word "general" after the first "the" in binding general note #2.

permitted by Zoning Ordinance §59-D-1.74(c)(3). See Planning Board letter of March 26, 2012 (Exhibit 32), incorporated herein by reference. On April 26, 2012, the Applicant filed a "Corrected Amended Declaration of Covenants" (Exhibit 37(a)), executed on April 20, 2012.²

The Planning Board found that "the proposed amendment is in substantial compliance with the Sector Plan and that the amendment does not represent a significant change from what was approved in 1990 in terms of the proposed use and extent of development on the property." Exhibit 32.

Technical Staff described the subject site in its report (Exhibit 32(a), pp. 4-5):

The subject site is located at 19815 Blunt Road on the east side of the road. Blunt Road is a short neighborhood road that runs southeast to northeast between Frederick Road and Middlebrook Road creating a small triangle at the southeast corner of the intersection of the two roads. The Germantown Employment area Sector Plan refers to the properties within the triangle as Blunt Road Triangle properties. The subject site is located directly across from these properties. The property is trapezoidal in shape with its front portion, adjacent to the road, narrower than its rear portion. The property is a record lot that was zoned O-M with the 1990 adoption of Local Map Amendment G-619. It consists of 2.06 acres of land. The property is currently unimproved and lightly forested. The rear portion of the property slopes downward toward the rear property line. The property has approximately 110 feet of frontage on Blunt Road which provides access to the site. Blunt Road terminates just short of Middlebrook Road to the northeast.

The surrounding area, as outlined by Staff, consists of an area roughly bounded by Middlebrook Road on the north; Middlebrook Road and Scenery Drive on the west; and Scenery Drive on the south and east. Staff describes the neighborhood as characterized by a mixture of commercial and residential uses. The northern portion of the neighborhood is residentially developed with single-family dwellings in the R-60 Zone. The central, western, and northwestern portions are commercially developed in the C-1 and C-3, and RMX-2C/TDR Zones. The eastern portion is developed with mobile homes in the RMX-2C/TDR Zone. The southern portion of the neighborhood is developed with commercial buildings in the C-3 zone and single family detached residences and Townhouses in the R-200 and RT-15 Zones. The subject property is surrounded by an undeveloped parcel of land (application for site plan review for a religious institution is pending) and single-family houses to the north, a shopping center to the south' and a mobile home park to the east. Commercial buildings in the C-3 Zone (automobile related uses) are located to the west, across Butler Road. Exhibit 32(a), pp. 5-6.

Technical Staff also provided the zoning history of the property (Exhibit 32, p. 6):

. . . [T]he site was in the R-R Zone prior to 1974. The 1974 approved Sectional Map Amendment (F-939) for Germantown reclassified the property from R-R to R-60. The 1984 SMA (G-404) for the Germantown Planning Area and the 1990

² The corrected filing was necessary because the originally executed amended covenants did not contain a full date of execution. The only changes were to add the date of execution and to correct the exhibit number listed for the final SDPA.

SMA for Germantown and Vicinity confirmed the R-60 zoning of the site. On January 23, 1990, the District Council approved Application G-619 with development restrictions to allow the reclassification of the property from R-60 to O-M. *The 2009 Germantown Employment Area Sector Plan* retained the property in the O-M Zone as limited by the Schematic Development Plan.

The 1990 Schematic Development Plan (SDP) was approved for a three-story general commercial office building and parking facility, but a Site Plan was never reviewed and the property has remained undeveloped. In the current application, the applicant, YBM Construction, requests the following (Exhibit 32(a), p. 8):

- Amend the Schematic Development Plan that was approved in 1990 in conjunction with G-619.
- Bring the 1990, approved Local Map Amendment in compliance with current environmental regulations and requirements relating to stream valley buffers, stormwater management facilities and forest retention.
- Increase the height of the building by one floor and adjust the number of parking spaces accordingly.
- Relocate the approved building and parking facility and decrease the size of the footprint of the building.
- Adjust the road alignment based on the 2009 Sector Plan recommendation.

With the proposed revisions to the SDP, the applicant proposes to construct a 4-story, 35,666 square-foot general office building. The proposed project also includes a surface parking facility with a minimum of three parking spaces for every 1000 square feet of office space. The property will be accessed directly from a driveway connection to Blunt Road.

These changes are reflected in the proposed amended development plan, SDPA 11-3 (Exhibit 33) and in its binding elements, which are set forth below:

Existing Zone O-M Total Tract Area: 89,522 S.F.				
Development Standard	Zoning Ordinance	Approved Binding Elements	Binding Elements for Amendment	Binding Use Restrictions
Lot Coverage	60%	40%	Not greater than 50%	The following uses are not permitted: Ambulance or rescue squads, private. Ambulance or rescue squads, public. Chancery. Fire stations. Places of Religious
Building Height-stories	5 stories	2 stories (front) 3 stories (rear)	Not greater than 4 stories	
Building Height-feet	60 Feet	2 stories - 26 Feet 3 stories - 38 Feet	Not greater than 50 Feet	
Floor Area Ratio (FAR)	Not greater than 1.5	0.4	Not greater than 0.4	
Gross Floor Area (GFA)	Not greater than FAR 1.5	0.4 (35,679 S.F.)	Not greater than 0.4 (35,679 S.F.)	
Green Area	10%	40%	Not less than 40%	
Front Setback-Blunt Road	15 Feet	220 Feet minimum	Provide 40 Feet minimum	

Side Setback- From adjacent residential property on Parcel 471, Lots 44-46 and Parcel 669	1 foot for each 3 feet of height ($60 \div 3 = 20$ Feet)	41 Feet	1 foot for each 3 feet of height	Worship.
Side Setback- From RMX-2C/TDR zone (commercial property on Parcel D)	1 foot for each 3 feet of height ($60 \div 3 = 20$ Feet)	40 Feet	Minimum 1 foot for each 3 feet of height	
Rear Setback- From the R-90 zone (Parcel 669)	1 foot for each 3 feet of height ($60 \div 3 = 20$ Feet)	110 Feet	Minimum 1 foot for each 3 feet of height	
Off Street Parking	3 spaces/1000 S.F. of office space	104 Spaces	Minimum 3 spaces/1000 S.F. of office space	
Binding General Notes				
1. As a binding element of this Schematic Development Plan, Applicant will provide a 3' evergreen hedge, board on board fence and landscaped buffer along the northern property line abutting the residential properties as substantially shown on the Landscape Concept Plan.				
2. The general location of the building on the lot as shown is a binding element of the Schematic Development Plan.				
Non-Binding General Notes				
1. The shape of the building shown on the Schematic Development Plan is for illustrative/non-binding purposes only.				
2. Except as shown, none of the following have been identified on this site:				
No rare, threatened or endangered species.				
No woodland, floor plain, wetlands or other natural resources				
No major vegetative growth				
No historic sites as indicated in the master plan for historic preservation				

The amended Binding Elements increase the height and number of stories for proposed building, and change the setback requirements, but Technical Staff reports that all of these are well within the standards of the O-M Zone. Staff notes that the 1990 approved SDP included Binding Elements regarding two phases of construction with specific references to the times that construction could commence for each phase. The 1990 Binding Elements also included a specific reference concerning access to the property that calls for a construction of a cul-de-sac link to Middlebrook Road Extended. The 1990 Binding Elements stated that a temporary access be provided by existing Blunt Road until the cul-de-sac is constructed and that the applicant widens Blunt Road between the property and Frederick Road (MD 355) to create a paved width of 20 feet. Exhibit 32(a), pp. 9-10.

The proposed amendment (SDPA-11-3) amends the approved access and related Binding Elements. Since the 2009 Sector Plan for Germantown Employment Area recommends that Blunt Road be connected with Middlebrook Road, the 1990 approved access via a cul-de-sac is no longer needed. The proposed plan depicts direct access to the property from Blunt Road, and the road's alignment for the planned Blunt Road/Middlebrook connection, consistent with the Sector Plan's recommendation. The revised binding elements are also contained in the "Corrected Amended Declaration of Covenants" (Exhibit 37(a)), which must be filed in the County's land records following the effective date of this resolution.

The proposed Binding Elements and the Binding General Notes are in conformance with the requirements of the zone, and most exceed the minimum requirements or are under the maximum permitted. The amended site plan does not propose changes in the gross floor area. The proposed height is one story higher than the 1990 approved maximum height. The District Council agrees with Technical Staff's finding that the proposed 4-story building with the maximum height of 50 feet is justified. Exhibit 32(a), p. 10.

In addition to the Schematic Development Plan Amendment and revised Covenants, the proposal is also subject to the review and approval of a Site Plan by the Planning Board. The size, scale, design elements, parking facility, forest conservation areas, setbacks, landscaping, green areas and other land use and design elements will be reviewed extensively at the time of Site Plan review. The adequacy of public facilities, including the Local Area Transportation Review (LATR) and Policy Area Transportation Review (PAMR), will be addressed at the time of Site Plan review. Technical Staff indicated that forest conservation issues and the dedication of part of the property for alignment of Blunt Road/Middlebrook Road will also be determined at the time of Site Plan review.

The proposed project is within the Germantown Employment Area Sector Plan, which has general and specific recommendations and comments in terms of land use for the area identified as the Fox Chapel District Property, within which the property is located. There is no specific recommendation for the subject O-M zoned property. The District Council finds that the proposal is generally consistent with the goals and objectives of the Sector Plan. Stepping down the proposed height of the building to 50 feet along the eastern edge of the Fox Chapel District is consistent with the Sector Plan recommendation for compatibility with the existing residential neighbors.

The Sector Plan also calls for the preservation of trees along the eastern end of the (mobile home) site for a compatible transition with existing R-200 residences. The amended SDP provides for an evergreen hedge and a board-on-board fence along that portion of the northern property line abutting the single-family residential properties. The District Council finds this proposal will be compatible with existing and future development in the area.

Technical Staff also reviewed the purpose clause and regulations of the O-M Zone, and the District Council finds that the proposed SDPA would be compliant therewith. Exhibit 32(a), pp. 17-19. The application complies with the purpose of the O-M Zone to provide locations for moderate intensity office buildings in areas where high-intensity uses are not appropriate, but where moderate intensity office buildings will not have an adverse impact on the adjoining neighborhood.

The District Council also finds that the proposed Schematic Development Plan Amendment, which has been recommended by Technical Staff and the Planning Board, is in the public interest.

As previously noted, the Planning Board recommended that the matter be forwarded to the Council without a public hearing before the Hearing Examiner. There has been no opposition to SDPA 11-3, and no request has been made for a hearing. Therefore, under the

provisions of Zoning Ordinance §59-D-1.74(c)(3), “the office of zoning and administrative hearings [OZAH] must forward the planning board’s report and recommendation directly to the council,” without a hearing by OZAH. In these kinds of cases, the District Council’s action is based solely on the record prepared by Technical Staff and the Planning Board’s transmittal letter.

The record is now complete, and the matter can be considered directly by the District Council without the need for a hearing or recommendation by the Hearing Examiner.

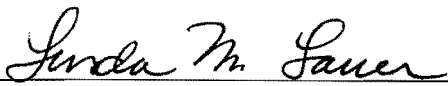
The District Council has reviewed SDPA 11-3 and concluded that the SDPA meets the requirements of the Zoning Ordinance, and its approval would be in the public interest. Based on this record, the District Council takes the following action.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

SDPA 11-3, which requests an amendment to the Schematic Development Plan and Declaration of Covenants approved in LMA G-619 on January 23, 1990, in Resolution No. 11-1825, by reconfiguring the location of the building and parking facility, adding to the height of the previously approved building, adjusting the road alignment and accommodating current environmental regulations, **is hereby approved**, subject to the specifications and requirements of the Schematic Development Plan Amendment, Exhibit 33, **provided that** the Applicant submits to the Hearing Examiner for certification, a reproducible original and three copies of the Schematic Development Plan Amendment approved by the District Council, within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance, and that the Corrected Amended Declaration of Covenants (Exhibit 37(a)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance, within the same time frame.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council